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Congress of the United States  
Washington, DC 20545

February 26, 2004

Michael K. Powell  
Chairman  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Dear Chairman Powell:

We are writing to express our views regarding the efforts by the Federal Communications Commission (the Commission) to address interference to public safety communications systems that operate in the 800 MHz band (WT Docket No. 02-55). We are troubled by reports that the Commission may address interference problems in a manner that results in an economic windfall to one company, and that would violate the competitive bidding requirement of Section 309(j) of the Communications Act.

We are extremely concerned about the increasing incidents of interference to public safety communications systems that operate in the 800 MHz band. Other than possibly military spectrum operations, we can think of no spectrum-related services more important than the communications systems for police, fire departments, and other emergency services. The Commission must take the steps necessary to address interference to public safety operations in the 800 MHz band, and there should be no greater spectrum-related priority.

Interference can and should be addressed without involving any spectrum outside of the 800 MHz band. For instance, interference could be addressed by rebanding the 800 MHz spectrum so that public safety and other high-site communications systems operate on frequencies that are adequately separated from entities employing low-site cellular infrastructure. This could be accomplished by reserving the lower portion of the 800 MHz band for public safety and other high-site systems and locating low-site systems in the upper portion. Rebanding in such a manner would be just as effective at addressing interference to public safety systems as the so-called "Consensus Plan." Please advise us on whether the Commission agrees with our assessment.

The Commission has the authority to relocate or otherwise modify the operation of incumbent licensees if the Commission believes that it is necessary to do so.<sup>1</sup> The Commission also has the authority to require commercial entities that benefit from rebanding to reimburse displaced

<sup>1</sup> For example, the Commission previously concluded that "a narrowly-tailored mandatory relocation mechanism is essential to implement a wide-area licensing scheme in the future 800 MHz ERM industry." Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of ERM Systems in the 800 MHz Frequency Band, First Report and Order, 11 FCC Red 1463, ¶ 23 (1995).

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incumbents for their relocation costs.<sup>2</sup> Please advise us whether the Commission agrees with our assessment.


If the Commission rebanded the 800 MHz band in a manner in which Nextel Communications was able to consolidate its 800 MHz spectrum allocations in a contiguous block, it appears that the value of Nextel's spectrum would increase considerably, and, as a result, Nextel would "benefit" from consolidating its spectrum allocations in the 800 MHz band. Please advise us whether we are correct in that assumption.

In addition, we understand that several entities have expressed an interest in utilizing the 1910-1915/1990-1995 MHz band for commercial mobile services. We would expect that, if the Commission were to conduct an auction of licenses for use of the 1910-1915/1990-1995 MHz band, such an auction would be hotly contested and would raise billions of dollars for the U.S. Treasury. Since there is increased interest in using the 1910-1915/1990-1995 MHz band, please explain how the Commission could simply give any entity a license or licenses to use all, or even part, of the band without violating Section 309(j) of the Communications Act's requirement to use competitive bidding to resolve mutually exclusive applications.

Once again, we would like to reiterate that the Commission must address interference to public safety systems in the 400 MHz band as quickly as possible. The Commission should reband, but should keep all existing 800 MHz licensees within the band rather than give one or more entities spectrum outside of the 800 MHz band without conducting an auction consistent with Section 309(j).

We appreciate your prompt attention to this matter. Please respond to our questions no later than March 15, 2004. We expect the Commission to take no action on this proceeding until the Commission has responded to our questions and we have had the opportunity to evaluate the responses. We look forward to your reply.

Sincerely,



<sup>2</sup> *Id.* ¶ 73 ("The record supports our conclusion that voluntary negotiations in and of themselves will not be adequate to usher in the wide-area licensing and thus 'we believe it is necessary . . . to establish a mandatory mechanism for those situations where relocation is feasible but voluntary negotiations have proved unsuccessful')."); ¶ 79 (requiring relocation reimbursement as a *quid pro quo* of involuntary relocation); see also *Amendments of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, Second Report and Order, 12 FCC Rcd 19079, ¶ 99 (1997) ("all EA licensees who benefit from the relocation of the incumbent must share the relocation costs on a pro rata basis"). In the SMR proceeding, the Commission rebanded the 800 MHz spectrum to authorize existing SMR licensees to bid for geographic-area (EA) licenses in the upper portions of the 800 MHz band. To ensure that EA licensees could enjoy the full benefits of the area-wide authorization, the Commission granted them the authority to relocate site-specific incumbents elsewhere in the band but required EA licensees to reimburse the relocation costs of the site-specific incumbents.

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